IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 718 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant
Versus
ARJANBHAI SOMABHAI THAKOR & 3 – Respondents

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Appearance :
MR MA PATEL ADDL PUBLIC PROSECUTOR for Appellant : 1,
MR DK MODI for Respondents : 1- 4.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 23/11/2006

ORAL JUDGMENT

1. Heard Shri Patel, learned Addl.P.P. for the appellant – State of Gujarat. Shri H.L. Jani has appeared for respondents but as he has accepted the

assignment as Addl.P.P., therefore, Shri D.K. Modi, appears for respondents – original accused.

2. The appellant – State of Gujarat has preferred this Appeal under Section 378 of the Code of Criminal Procedure, 1973 (herein after referred to as 'the Code' for short) challenging the judgment and order of acquittal passed by the learned JMFC, Dahegam dated 4.4.1994 in Criminal Case No. 984 of 1991, acquitting the respondents – original accused of the charges under Section 7 *and* 16 of the Prevention of Food Adulteration Act, 1954 (herein after referred to as 'the Act” for short).

3. This Court (Coram : K.R. Vyas, J.) vide order dated 16.12.1994 has granted leave and admitted the matter.

4. The accused No. 1 was a vendor, who sold the sample food article to the Food Inspector. Accused No. 2 was an owner of the shop, wherefrom, the sample food article was purchased, accused No. 3 was the Producer Company, who produced the sample food article – ground nut oil and accused No. 4 was a nominee of accused No. 3.

5. The case of the prosecution in brief deserves to be set out as under.

6. The complainant Food Inspector while discharging his duties as such on 29.1.1991 at 10-00 O'clock visited the shop of accused Nos.1 and 2 at Dahegam, wherein, the accused No. 2 was having his shop in the name of “Nilay Marketing” dealing in Vegetable and edible oil. After introducing himself as a Food Inspector and in presence of Panch witnesses, inquiries were made in respect of ownership of the shop and licence etc. was collected. Thereafter, ground nut oil of Moti Brand, double filter Ground Nut Oil produced by Patel Jeram & Company, Dhoraji was noticed. The complainant – Food Inspector after issuing notice in Form VI under Rule 12 of the Prevention of Food Adulteration Rules, 1955 (herein after referred to as 'the Rules' for short) of his intention to collect the sample of ground nut oil and after taking counter signatures of the panchas and vendor, which is at Ex.26, purchased 500 grams of ground nut oil in the vessel on payment of Rs.21/- and obtained receipt whereof, which is produced at Ex. 27. Thereafter the Food Inspector had divided the sample article into three equal parts and transferred the same into three clean, dry, odourless, transparent glass bottles. The glass bottles were thereafter sealed properly in accordance with law. The labels of Food Inspector serial number of Local Health Authority etc. were

pasted on it. In presence of panchas, the panchnama was drawn. The bill of purchasing the ground nut oil from Patel Jeram & Co. dated 22.12.1990 bearing Sr. No. 24 was shown to the Food Inspector, copy whereof was collected, which bear the signature of the panch witnesses and the same has been produced at Ex. 28. The panchnama is at Ex.29. The sealing of the tin wherefrom the sample Food Article was taken was collected and the same is produced at Ex. 30. On 30.1.1991 from the office of the Food Inspector one sample food article out of the three samples, was sent to the Public Analyst, Rajkot for the purpose of analysis. The memorandum and specimen seal, and specimen copy of the seal impression used for sealing the sample food article was separately sent to the Public Analyst, copies whereof are produced at Ex. 31 and 32 respectively. The memorandum is produced at Ex. 33. The receipt issued by the Public Analyst of receiving the sample food article is at Ex. 36. The remaining two samples were sent right on the same day i.e. on 30.1.1991 to the Local Health Authority along with two copies of memorandum and specimen signature of the seal. The receipt of Local Health Authority is produced at Ex. 37. As the sample food article was declared to be adulterated by the Public Analyst, Local Health Authority report along with papers were sent to the Food Inspector.

The Food Inspector thereafter sought sanction of the Local Health Authority for lodging the prosecution. The Local Health Authority had issued sanction vide letter dated 22.7.1991, which is at Ex. 45. The complaint came to be lodged on 6.8.1991, which came to be registered as Criminal Case No. 984 of 1991. On 7.8.1991, the Local Health Authority was requested to issue notice to the accused under Section 13(2) of the Act, the office copy whereof is produced at Ex. 46. The Local Health Authority vide its letter dated 3.2.1991 by registered AD Post issued notice under Section 13(2) of the Act to the accused. The copy of the notices at Ex. 47. The postal acknowledgment card have been produced on the record. The accused were summoned. They pleaded not guilty and claimed to be tried. After recording evidence of the prosecution, case of the prosecution was put to the accused, which was denied by the accused in its totality. After reading the evidence on record and appreciating the same, the trial Court came to the conclusion that the prosecution has failed in proving its case beyond reasonable doubt and therefore, the benefit of doubt was given to the accused and trial Court ordered acquittal, acquitting the respondents – original accused of the charges vide judgment and order dated 4.4.1994, which is the impugned in the present appeal.

7. Shri Patel, learned Addl.P.P. has vehemently submitted that the order of acquittal suffers from error apparent on the face of the record and therefore, the same deserves to be quashed and set aside. Shri Patel has submitted that the trial Court has recorded finding contrary to the evidence on record and based upon such erroneous finding, the order of acquittal has been passed and therefore, the same deserves to be quashed and set aside. Shri Patel has submitted that the sample food article was declared to be adulterated and as there is a finding of the Public Analyst about the food article being adulterated, the trial court ought not to have given the benefit of doubt to the accused when the prosecution has established that there was no procedural lapse on the part of the prosecution and/or of the Food Inspector in performing the entire procedure. Shri Patel has further submitted that the trial Court's order is erroneous and therefore, the same deserves to be quashed and set aside as the accused has sold the adulterated food to the Food Inspector and

he has committed an offence punishable under Section 16 of the Act and therefore, the order of acquittal impugned in this appeal deserves to be quashed and set aside and accused be inflicted with appropriate penalty.

8. Shri Modi, learned counsel appearing for the respondents original accused has submitted that the acquittal appeal deserves to be dismissed only on one ground that it can be established from even a glance at a report of the Director of Central Food Laboratory at Exh. 54, which indicate that the mandatory provisions of Rule 4 of the Rules have not been complied with. Shri Modi has submitted that this Court in case of ***Laxmichand Bhailal Thakker Vs. State of Gujarat*** reported in 1995(2)GLR p.1528, has observed that a breach of Rule 4, which is a mandatory in nature, shall vitiate the case of the prosecution. Shri Modi has relied upon Para – 5 of the judgment.

9. Shri Modi has also submitted that even otherwise also this being an acquittal appeal, the Court would ordinarily be slow in interfering with the order of acquittal, unless and until it is established by the appellant that the order impugned is being so perverse and illegal, as to result into miscarriage

of justice, this Court may not inclined be to interfere with the order of acquittal.

10. This Court has perused the record of the case and also heard the counsels for the parties at length. Shri Modi's submission that non-compliance of Rule 4 of the Rules deserves to be considered and accepted. From the record of the case, it is clearly established that there is a breach of Rule 4 of the Rules, as it is on the record that the seals on sample container were intact. The seals on outer cover of sample parcel were also intact and tallied with the specimen impression of seal enclosed with copy of memorandum forwarded separately, however, it is not clearly mentioned by the Director of Central Food Laboratory that Court also applied its seal on both the containers.

11. This court has time and again observed that absence of reference to Form – I in the report of Director of Central Food Laboratory would cast doubt about the compliance. In this case, it is conspicuously not mentioned by the Director of Central Food Laboratory as to whether there was a seal on the container. It is a mandatory provision under Rule 4, and therefore, it cannot be said that it is complied with.

This Court in the case of State of Gujarat Vs. B.M. Mehta, reported in 1999(1) GLH 227, had a occasion to examine the breach of Rule 4 and in that case, this Court has held that it cannot be said that there was compliance with Rule 4 in sending sample by the Court to the CFL. This Court in the case of State of Gujarat Vs. Gafurbhai Bhikhabhai Mansuri and others, reported in 2005(3) GLH 409, and in another case of State of Gujarat Vs. Jayantibhai Maganbhai Patel in Criminal Appeal No. 1037 of 1992, decided on 29.8.2005 by this Court (Coram: S.R. Brahmbhatt, J.) has held that Rule 4 has not been complied with when the identical wordings were employed by the Director of CFL in the certificate. In the case of State of Gujarat Vs. Gafurbhai Bhikhabhai Mansuri (Supra) the wordings of the Director of CFL at exh. 43 in that case, read as under:-

> “The seals on sample container were intact and tallied with the specimen impression of seal given on copy of Form VII enclosed. The seals on outer cover of sample parcel were also intact and tallied with the specimen impression of seal enclosed with copy of memorandum forwarded separately.”

It is held that when such recording employed there, it does not amount to compliance with Rule 4 as there is no reference with respect to Form No. 1. In the instant case also the averment of Director of CFL in respect of seal as it is stated hereinabove, deserves to be viewed in its proper perspective. The same may be set out as under:

> “The seals on sample container were intact. The seals on outer cover of sample parcel were also intact and tallied with the specimen impression of seal enclosed with copy of memorandum forwarded separately.”

12. Thus, when reference to Form No. 1 is conspicuously absent in the CFL report, the Court has categorically held that the prosecution cannot be said to have established beyond doubt the compliance with Rule 4 and therefore the benefit of doubt accorded to the accused cannot be said to be unjustified or unreasonable.

13. Accordingly, this Court is of the view that judgment and order of acquittal dated 4.4.1994 passed by the learned JMFC, Dahegam in Criminal Case No. 984 of 1991 does not call for any interference. The appeal, therefore, deserves to be dismissed and is

accordingly dismissed.

(S.R.BRAHMBHATT, J.)

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